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87TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } No. 1

FACILITATING THE PROMPT AND ORDERLY CONDUCT OF THE BUSINESS OF THE FEDERAL COMMUNICA- TIONS COMMISSION

Ordered to be printed

Mr. *W. H. Clegg*, from the committee of conference, submitted
the following

CONFERENCE REPORT

[To accompany S. 2034]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2034) to amend the Communications Act of 1934, as amended, in order to expedite and improve the administrative process by authorizing the Federal Communications Commission to delegate functions in adjudicatory cases, repealing the review staff provisions, and revising related provisions, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That subsection (c) of section 5 of the Communications Act of 1934, as amended, relating to a "review staff", is hereby repealed.

SEC. 2. Subsection (d) of section 5 of the Communications Act of 1934, as amended, is amended to read as follows:

"(d) (1) When necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business, the Commission may, by published rule or by order, delegate any of its functions (except functions granted to the Commission by this paragraph and by paragraphs (4), (5), and (6) of this subsection) to a panel of commissioners, an individual commissioner, an employee board, or an individual employee, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter; except that in delegating review functions to employees in cases of adjudication (as defined in the Administrative Procedure Act), the delegation in any such case may be made only to an employee board consisting of three or more employees referred to in paragraph (8). Any such rule or order may be adopted, amended, or rescinded only by a vote of a majority of the members of the Commission then holding office. Nothing in this paragraph shall authorize the Commission to provide for the conduct, by any person or persons other than persons referred to in clauses (2) and (3) of section 7(a) of the Administrative Procedure Act, of any hearing to which such section 7(a) applies.

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"(2) As used in this subsection (d) the term 'order, decision, report, or action' does not include an initial, tentative, or recommended decision to which exceptions may be filed as provided in section 409(b).

"(3) Any order, decision, report, or action made or taken pursuant to any such delegation, unless reviewed as provided in paragraph (4), shall have the same force and effect, and shall be made, evidenced, and enforced in the same manner, as orders, decisions, reports, or other actions of the Commission.

"(4) Any person aggrieved by any such order, decision, report or action may file an application for review by the Commission within such time and in such manner as the Commission shall prescribe, and every such application shall be passed upon by the Commission. The Commission, on its own initiative, may review in whole or in part, at such time and in such manner as it shall determine, any order, decision, report, or action made or taken pursuant to any delegation under paragraph (1).

"(5) In passing upon applications for review, the Commission may grant, in whole or in part, or deny such applications without specifying any reasons therefor. No such application for review shall rely on questions of fact or law upon which the panel of commissioners, individual commissioner, employ board, or individual employee has been afforded no opportunity to pass.

"(6) If the Commission grants the application for review, it may affirm, modify, or set aside the order, decision, report, or action, or it may order a rehearing upon such order, decision, report, or action in accordance with section 405.

"(7) The filing of an application for review under this subsection shall be a condition precedent to judicial review of any order, decision, report, or action made or taken pursuant to a delegation under paragraph (1). The time within which a petition for review must be filed in a proceeding to which section 402(a) applies, or within which an appeal must be taken under section 402(b), shall be computed from the date upon which public notice is given of orders disposing of all applications for review filed in any case.

"(8) The employees to whom the Commission may delegate review functions in any case of adjudication (as defined in the Administrative Procedure Act) shall be qualified, by reason of their training, experience, and competence, to perform such review functions, and shall perform no duties inconsistent with such review functions. Such employees shall be in a grade classification or salary level commensurate with their important duties, and in no event less than the grade classification or salary level of the employee or employees whose actions are to be reviewed. In the performance of such review functions such employees shall be assigned to cases in rotation so far as practicable and shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency.

"(9) The secretary and seal of the Commission shall be the secretary and seal of each panel of the Commission, each individual commissioner, and each employ board or individual employee exercising functions delegated pursuant to paragraph (1) of this subsection."

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SEC. 3. Section 405 of the Communications Act of 1934, as amended, is hereby amended to read as follows:

“REHEARINGS

“SEC. 405. After an order, decision, report, or action has been made or taken in any proceeding by the Commission, or by any designated authority within the Commission pursuant to a delegation under section 5(d)(1), any party thereto, or any other person aggrieved or whose interests are adversely affected thereby, may petition for rehearing only to the authority making or taking the order, decision, report, or action; and it shall be lawful for such authority, whether by the Commission or other authority designated under section 5(d)(1), in its discretion, to grant such a rehearing if sufficient reason therefor is made to appear. A petition for rehearing must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of. No such application shall excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. The filing of a petition for rehearing shall not be a condition precedent to judicial review of any such order, decision, report, or action, except where the party seeking such review (1) was not a party to the proceedings resulting in such order, decision, report, or action, or (2) relies on questions of fact or law upon which the Commission, or designated authority within the Commission, has been afforded no opportunity to pass. The Commission, or designated authority within the Commission, shall enter an order, with a concise statement of the reasons therefor, denying a petition for rehearing or granting such petition, in whole or in part, and ordering such further proceedings as may be appropriate; Provided, That in any case where such petition relates to an instrument of authorization granted without a hearing, the Commission, or designated authority within the Commission, shall take such action within ninety days of the filing of such petition. Rehearings shall be governed by such general rules as the Commission may establish, except that no evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission or designated authority within the Commission believes should have been taken in the original proceeding shall be taken on any rehearing. The time within which a petition for review must be filed in a proceeding to which section 402(a) applies, or within which an appeal must be taken under section 402(b) in any case, shall be computed from the date upon which public notice is given of orders disposing of all petitions for rehearing filed with the Commission in such proceeding or case, but any order, decision, report, or action made or taken after such rehearing reversing, changing, or modifying the original order shall be subject to the same provisions with respect to rehearing as an original order.”

SEC. 4. Section 409 (a), (b), (c), and (d) of the Communications Act of 1934, as amended, are amended to read as follows:

“(a) In every case of adjudication (as defined in the Administrative Procedure Act) which has been designated by the Commission for hearing, the person or persons conducting the hearing shall prepare and file an initial, tentative, or recommended decision, except where such person or persons become unavailable to the Commission or where the Commission finds upon the record that due and timely execution of its functions imperatively and unavoidably require that the record be certified to the Commission for initial or final decision.

unavoidable

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"(b) In every case of adjudication (as defined in the Administrative Procedure Act) which has been designated by the Commission for hearing, any party to the proceeding shall be permitted to file exceptions and memoranda in support thereof to the initial, tentative, or recommended decision, which shall be passed upon by the Commission or by the authority within the Commission, if any, to whom the function of passing upon the exceptions is delegated under section 5(d)(1): Provided, however, That such authority shall not be the same authority which made the decision to which the exception is taken.

"(c)(1) In any case of adjudication (as defined in the Administrative Procedure Act) which has been designated by the Commission for a hearing, no person who has participated in the presentation or preparation for presentation of such case at the hearing or upon review shall (except to the extent required for the disposition of ex parte matters as authorized by law) directly or indirectly make any additional presentation respecting such case to the hearing officer or officers or to the Commission, or to any authority within the Commission to whom, in such case, review functions have been delegated by the Commission under section 5(d)(1), unless upon notice and opportunity for all parties to participate.

"(2) The provision in subsection (c) of section 5 of the Administrative Procedure Act which states that such subsection shall not apply in determining applications for initial licenses, shall not be applicable heretofore in the case of applications for initial licenses before the Federal Communications Commission.

"(d) To the extent that the foregoing provisions of this section and section 5(d) are in conflict with the provisions of the Administrative Procedure Act, such provisions of this section and section 5(d) shall be held to supersede and modify the provisions of that Act."

SEC. 5. Notwithstanding the foregoing provisions of this Act, the second sentence of subsection (b) of section 409 of the Communications Act of 1934 (which relates to the filing of exceptions and the presentation of oral argument), as in force at the time of the enactment of this Act, shall continue to be applicable with respect to any case of adjudication (as defined in the Administrative Procedure Act) designated by the Federal Communications Commission for hearing by a notice of hearing issued prior to the date of the enactment of this Act.

And the House agree to the same.

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NEW PAGE

STATEMENT OF THE MANAGERS ON THE PART OF THE
HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2034) to amend the Communications Act of 1934, as amended, in order to expedite and improve the administrative process by authorizing the Federal Communications Commission to delegate functions in adjudicatory cases, repealing the review staff provisions, and revising related provisions, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

This legislation deals exclusively with amendments to the Communications Act of 1934, referred to herein as "the Act".

Insofar as the substitute agreed to in conference differs from the House amendment in substance, the differences are explained below. Otherwise, except for clerical, conforming, and minor technical changes, the substitute agreed to in conference is the same as the House amendment.

DISPOSITION OF APPLICATIONS FOR REVIEW BY THE COMMISSION

full — The proposed paragraph (4) of subsection (d) of section 5 of the Act, as contained in this legislation, provides that where a person is aggrieved by an order, decision, report, or action taken by any authority (that is, a panel of commissioners, an individual commissioner, or an employee board) in the exercise of review functions delegated to it by the FCC, such aggrieved person may file an application for review by the Commission. Paragraph (4) provides that every such application shall be passed upon by the Commission. The function of passing upon such applications is a function which under this legislation the Commission will not be authorized to delegate to anyone else. *full*

In the House amendment, paragraph (4) contained a proviso authorizing the Commission by published rule or by order to limit the right to file such applications for review by the Commission, in cases of adjudication (as defined in the Administrative Procedure Act), to proceedings involving issues of general communications importance. *full*

The bill as passed by the Senate contained no such provision.

members *base of* *the* This provision is not retained in the conference substitute. The Senate members of the committee of conference did not favor it. Furthermore, some of the House members of the committee of conference did not favor the provision.

Those who favored retaining the provision felt that it would aid the Commission to relieve itself of the necessity of passing on applications for review in many cases which are relatively unimportant and of a routine nature, thereby saving more of its own time for the consideration of questions of relatively major importance. However, those opposed to the provision made the point that since a party could always raise the issue of "general communications importance" and argue that his case fell in that category, the time which might be consumed by the Commission in considering and ruling on this issue might very well offset any saving of time which might otherwise be achieved by exercising the authority granted by the proviso. Furthermore, it was pointed out that the burden of passing upon applications for review is not necessarily a heavy one, since the Commission will not be required, under the legislation, to specify any reasons for its action when it grants or denies an application for review. *themselves* *enabling them to devote more time to*

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INDIVIDUALS SERVING ON EMPLOYEE BOARDS

Under this legislation the Commission would be authorized to delegate review functions in cases of adjudication (as defined in the Administrative Procedure Act) to boards of employees.

Both the bill as passed by the Senate and the House amendment contained special provisions with respect to the employees to whom such delegations may be made.

The Senate provision provided that such functions could be delegated to employees "who by reason of their training, experience, competence, and character are especially qualified to perform such review functions". It also provided that insofar as practicable such functions should be delegated only to employees who are "in a grade classification or salary level equal to or higher than the employee or employees whose actions are to be reviewed".

The House provision provided that such employees shall be "well qualified, by reason of their training, experience, and competence, to perform such review functions". The House provision also provided that such employees should be given no other duties than the duty of exercising such review functions. As to compensation, it provided that such employees should be paid "compensation at rates commensurate with the difficulty and importance of their duties". It contained another provision to the effect that such employees "shall not be responsible to, or subject to the supervision or direction of, any person engaged in the performance of investigative or prosecuting functions for the Commission or any other agency of the Government".

In the substitute agreed to in conference the provision on this subject, designated as paragraph (8), is similar to the provision in the House amendment but there are some differences.

Instead of providing that such employees shall perform no other duties than those concerned with the exercise of such review functions, the conference substitute provides that such employees shall "perform no duties inconsistent with such review functions".

The FCC has submitted the following examples of additional duties which, in its opinion, would not be inconsistent with the review function and which therefore could be assigned to employees serving on employee boards:

1. Drafting or analyzing legislation.
2. Studying procedures of the FCC with a view to expediting cases.
3. ~~Assigned by FCC~~ to Administrative Conference of the United States and perform duties in connection with the work of such Conference.
4. ~~Drafting opinions in the administrative Office of Opinions and Review~~

The substitute provides that such employees be "in a grade classification or salary level commensurate with their important duties, and in no event less than the grade classification or salary level of the employee or employees whose actions are to be reviewed". It also contains a provision which was not in the House amendment, that in the performance of such review functions such employees shall be assigned to cases in rotation so far as practicable.

AUTHORITY TO PASS UPON EXCEPTIONS

There was another difference between the Senate bill and the House amendment—a difference more of language than of substance. In the Senate bill, in the provision (subsec. (b) of sec. 409) authorizing parties to file exceptions to initial, tentative, or recommended decisions, a proviso was included stating in effect that the authority to which the Commission delegates the function of passing on the exceptions to such a decision shall not be the same authority which made the decision. Although the House amendment contained no similar provision, it is believed that the same result would have been reached under the House amendment, reading it as a whole. Certainly there was no intention that the maker of the decision could be given authority to review its own decision. The Senate proviso is retained in the conference substitute in order that this will be abundantly clear.

*Assignment
performance of*

*Assigning
Commissioners
in the
drafting of
opinions.*